

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

UNITED STATES OF AMERICA : Criminal Action No.

v. : PJM 03-457

KENNETH LIGHTY, et al., : Greenbelt, Maryland

Defendant. : Friday, August 12, 2005

_____/

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: ROBERT HARDING, ESQUIRE
Office of the U.S. Attorney
6500 Cherrywood Lane, Suite 400
Greenbelt, Maryland 20770
301-344-4433

FOR THE DEFENDANT: JEFFREY B. O'TOOLE, ESQUIRE
DANYA ARIEL DAYSON, ESQUIRE
O'Toole, Rothwell, Nassau & Steinbach
1350 Connecticut Avenue, NW, Suite 200
Washington, D.C 20036
202-775-1550

OFFICIAL COURT REPORTER: LINDA C. MARSHALL, (301) 344-3229

COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Counsel, Judge Messitte here.

MR. HARDING: Judge, Robert Harding from the United States Attorneys office.

DR. SHAPIRO: This is Dr. Shapiro, Judge.

MR. O'TOOLE: Your Honor, this is Jeff O'Toole and Danya Dayson.

DR. O'CONNELL: And this is Dr. Michael O'Connell.

THE COURT: All right. I have a court reporter here. So, Mr. O'Toole, I guess I'll hear from you.

MR. O'TOOLE: Your Honor, thank you for taking the time to do this.

THE COURT: Okay.

MR. O'TOOLE: We submitted, as you know, a notice, but the testing -- and perhaps the Court has our notice before you.

THE COURT: Right.

MR. O'TOOLE: We also, there's also an order that you signed talking about what the parameters of the government's testing can be if the notice is given by defense.

Also, we have a proposed testing by the government, which includes not only tests which would be trying to rebut our testing, but also testing that goes considerably beyond that personality testing and looking for diagnoses, and in general, going far beyond rebuttal.

I don't know if the Court has the notice that Mr.

1 Harding sent to us, but it's clear to us and clear to our expert
2 that the testing that they propose goes far beyond rebuttal
3 testing. It's clear that the order that you signed and in
4 particular --

5 THE COURT: Wait a minute, Mr. O'Toole.

6 Did the government send something?

7 MR. HARDING: Yes, Your Honor, I sent a notice to my
8 adversary and to my experts, but I didn't copy the Court.

9 THE COURT: Okay. I'm not finding what you're talking
10 about.

11 MR. HARDING: It's a letter I wrote of August 9th that
12 simply identifies the two government experts and list a number
13 of tests that one of the experts, Dr. Shapiro, who is on the
14 line right now, proposes to give in rebuttal to the defense
15 notice.

16 THE COURT: Well, do I need that document in front of
17 me to decide this matter?

18 MR. HARDING: Well, Your Honor, you only need it to
19 the extent that it's clear from reading the testing that they
20 propose that it goes far beyond what you in your order and what
21 12.2 demands, and the case law states shall at all, states what
22 can be done by the government by way of testing that judging by
23 the government is framed by the notice that is prepared by the
24 defense.

25 THE COURT: Well, let me understand what the

1 government's position is before you go any further.

2 What is your position, Mr. Harding, about these tests?

3 MR. HARDING: Our position -- and first, let me say
4 that I will fax a copy of my letter to your chambers immediately
5 after this conference call. And for purposes of this
6 conversation, I will -- if Your Honor wants, I will simply read
7 the list of tests off to you, but I suspect that unless you have
8 a Ph.D in psychology, they won't mean a great deal to you.
9 They're just some standard names of some standard tests similar
10 to the standard tests and defense contend that they are
11 different.

12 The government's position is that the defense has
13 given us notice that includes a whole battery of
14 neuropsychological tests and we cannot replicate any of those
15 tests, because there is something called the practice effect
16 that prevents repeat of the same test for a substantial period
17 of time, because the repeat would be distorted by the fact that
18 the person had previously received the same test. So, we can't
19 repeat their tests.

20 Dr. Shapiro, who is on the line and can explain this
21 in better detail than I can, maintains that his tests are all
22 neuropsychological tests; that there are some that delve into
23 personality issues, but that the defense tests also include
24 personality tests. The anxiety inventory and depression
25 inventory too are tests that are mood test, but there is no way

1 to distinguish mood from personality, and that these tests also,
2 therefore, go into the area of personality.

3 As I understand it, Mr. O'Toole disputes only certain
4 ones of the government tests that he claims are personality test
5 that Dr. Shapiro is quite adamant that he cannot adequately
6 rebut what the defense tests are going to show without having a
7 full battery of tests available to him to perform.

8 And he will -- I will call on him to explain in better
9 detail than I can exactly why he says that, but our position is
10 that -- first thing, we cannot begin to guess what the defense
11 experts are going to say. They've given us only the most broad
12 and vague description of the scope of the experts' testimony and
13 what their examinations are.

14 So, in order to rebut their case as we are bound to do
15 and allowed to do by this Court's order, we have to be able to
16 perform these tests.

17 Dr. Shapiro, can you explain in a layman's terms why
18 it is --

19 DR. SHAPIRO: Sure, Mr. Harding. Thank you.

20 Your Honor, I have some -- some of my concerns, let me
21 just try to summarize it. When you perform a battery of
22 neuropsychological tests, the test are not like an x-ray or CAT
23 scan or MRI. What they do is to point to various areas of
24 functioning that might be impaired. The problem is unless you
25 have broader battery of test, you don't know what is causing

1 them.

2 So, in other words, things such as anxiety,
3 depression, presence of a mental illness, presence or absence of
4 motivation, those can all affect the neuropsychological test
5 results. So, in the absence of doing all of those other tests,
6 you don't know what the meaning of those neuropsychological test
7 results are.

8 The neuropsychological tests, for instance,
9 themselves, they don't have any built-in index for measuring
10 motivation. You know, the person may be faking the test
11 results. And without me doing a broader battery of tests, you
12 don't know whether those tests results are valid.

13 And the other important thing is the personality test
14 will tell you what, what sort of behaviors a person is going to
15 manifest. In other words, whether when they get emotionally
16 stirred up, whether they pull into themselves, whether they will
17 act in a violent manner.

18 So, even presuming that there is neuropsychological
19 impairment, the personality tests are the only thing that will
20 address what kinds of behaviors might come out as a result of
21 that impairment. You can't get that information from the
22 neuropsychological test themselves.

23 MR. O'TOOLE: Jeff O'Toole again, if I could.

24 THE COURT: Go ahead.

25 MR. O'TOOLE: Your Honor, the government's position

1 seems to be and with all due respect to Mr. Harding and Dr.
2 Shapiro, I think they're wrong. Their position seems to be that
3 in every situation where there's 12.2 notice they want a
4 complete mental health evaluation.

5 Now, that is absolutely directly contrary to your
6 order signed in this case wherein it states that the testing
7 done by the government shall be testing only, simply and only to
8 rebut the testing done by the defense.

9 What Dr. Shapiro says is absolutely wrong with respect
10 to malingering. There is a test that was done by Dr. O'Connell
11 to test for malingering.

12 DR. SHAPIRO: May I address that, sir?

13 THE COURT: Let him finish his statement.

14 MR. O'TOOLE: With respect to the defense tests that
15 we have suggested and we have conducted, it tests his mood with
16 respect to his ability to conduct the testing in his present
17 cognitive state, but it doesn't allow the government to go into
18 a full battery of testing to see what his mood is over the
19 course of time.

20 If what the government proposes to do, Judge, is
21 authorized, then why did they propose this order? Why did they
22 propose the exact language, which very specifically was used by
23 you and by Judge Chasanow to limit directly the testing. It
24 would make 12.2 meaningless and the case law meaningless.

25 What we would do is say, as soon as the defense says

1 we want to do testing of any sort and going to introduce any
2 evidence with respect to mental condition, the government can do
3 exactly what they want, including a full mental health
4 evaluation and we'll see what we get. Everything can affect
5 everything.

6 If that were the argument, then your specific examples
7 that are put into your order at the bottom of Page 3 by way of
8 example, should the defense provide notice of its intent to
9 introduce expert evidence based upon a substance abuse
10 assessment, for instance, the government evaluation shall assess
11 substance abuse, not other matters --

12 MR. HARDING: Judge, your order says --

13 MR. O'TOOLE: If I can finish, Mr. Harding.

14 -- such as personality assessment, such as personality
15 functioning. So, in the second one, Your Honor, similarly and I
16 think more importantly on point, if the defense gives notice of
17 an intent to rely upon neuropsychological testing, which we are,
18 a measure of function, the government may perform similar
19 testing. The government may not use the defense notice as the
20 reason to perform an evaluation that reaches beyond that
21 necessary to rebut the defense experts.

22 Now, if Dr. Shapiro were seeking to treat my client,
23 perhaps this full medical assessment might be necessary. The
24 government is seeking to execute our client. That's a far
25 different situation.

1 So I think what the government is seeking to do, while
2 it may be interesting to Dr. Shapiro and Mr. Harding, is not in
3 the least consistent with your order on this case and Judge
4 Chasanow's order in the *Irvin* case.

5 THE COURT: Well, let me go to the specific language
6 that both sides are relying on. Let me start with you,
7 Mr. O'Toole. Where is it in the order of June 10 that you are
8 saying that the government is precluded from doing what it
9 proposes to do?

10 MR. O'TOOLE: Your Honor, I was reading directly from,
11 I was reading directly from paragraph seven which goes from Page
12 3 to Page 4. And this, Your Honor, I would note is an order
13 that was proposed by the United States. We had, as you know, in
14 our proposed order much more even. We had this language and we
15 had additional language that we wanted.

16 We wanted somebody present during the testing and some
17 other matters, and Your Honor found that this was the wording
18 that was appropriate. And this is not -- if the government now
19 is saying, we don't have enough information to make our testing
20 adequate, perhaps the time to have argued that was when we,
21 before we did our testing, before we submitted our notice and
22 before they submitted this order to the Court.

23 MR. HARDING: Judge, may I respond?

24 THE COURT: No, before you respond, let me -- what do
25 you understand to be the, the testing that you're relying on?

1 Are you talking about neuropsychological testing, Mr. O'Toole?

2 MR. O'TOOLE: Your Honor, we have neuropsychological
3 testing which we, which we noticed in our 12.2 notice. And we
4 have very specific testing as your order contemplated that we
5 give them notice of very specific testing.

6 I would note, as far as I can tell, the doctor chosen
7 by the government is not a neuropsychologist, he's a
8 psychologist. I'm not sure of the import of that at the moment,
9 but he's not.

10 Their proposed order and their proposed testing, when
11 you get it, Your Honor, there are a series of test which we do
12 not object to because they are appropriately rebuttal designed
13 test is.

14 THE COURT: Is Dr. O'Connell there?

15 DR. O'CONNELL: Yes.

16 THE COURT: Let me hear from you. What do you say
17 about all this? And really, the issue is whether you think the
18 testing proposed by the government somehow goes unreasonably
19 beyond the scope of the testing that you performed.

20 DR. O'CONNELL: Okay. My position was when I, getting
21 back to the specific referral question, I was asked to perform a
22 neuropsychological evaluation to look at cognitive functioning
23 with the specific focus being on cognitive functioning, not on
24 personality. I was asked not to include personality.

25 The referral question was to identify mitigating

1 factors that could help understand the defendant's thinking
2 which could then be incorporated into some of the other
3 evaluations that were going on; the developmental analysis and
4 he also underwent a neurological evaluation. So it was not an
5 evaluation where the referral question was, is the person
6 competent or responsible or diminished capacity.

7 And I told and spoke with Mr. O'Toole and Ms. Dayson
8 that some of the limits of this would be that I would not be
9 able to offer a diagnosis in this condition, but that what I
10 would be doing would be to assess his current thinking and
11 whether that could be used as a mitigating factor.

12 I also did include measures of current mood and
13 effort, because I felt that those were necessary to have any
14 confidence in his performance on the test that I did administer.

15 THE COURT: Well, let me ask you two questions. Do
16 you agree with Dr. Shapiro about the practice effect? And
17 secondly, is there some way in which your own testing would have
18 been more dependable if you had done more extensive related
19 testing?

20 DR. O'CONNELL: Well, I do agree with Dr. Shapiro
21 about the practice effects. And the -- and to answer your
22 second question, I think the uniqueness of the referral question
23 dictated what tests I felt were appropriate, and what tests I
24 felt, given that there was an interest in simply cognition and
25 not personality, that I could administer and those that I could

1 not administer.

2 So, to me it boils down to what, what is the purpose
3 of the testing, what is the referral question.

4 THE COURT: Well, stay with that though for a minute.
5 I mean, is there something, how shall I put it, unduly
6 restrictive about the way in which the referral was made that
7 would somehow impede your ability to come to a meaningful
8 conclusion about the individual?

9 This is not something to be used against you. I don't
10 see it that way. I'm just trying to understand whether in fact
11 you're of such a narrow focus that there may be another way to
12 come at the same conclusion that's not necessarily in conflict
13 with yours.

14 DR. O'CONNELL: I mean, I felt that it is limited what
15 I can say about the individual, but I viewed it as the goal
16 being simply identifying mitigating factors, and it could be as
17 benign as his behavior while he's being detained. So I didn't
18 see that I'd be able to provide a meaningful diagnosis or even
19 really comment so much on how his impairments impact his
20 behavior or his alleged behavior, but more simply this is how
21 he's thinking now and that these test results could be used by
22 others who are doing the other evaluations that I mentioned.

23 THE COURT: Well, in this context of this particular
24 case, is it reasonable to limit Dr. Shapiro to exactly the tests
25 that you performed given the practice effect? And

1 alternatively, is there a way that reasonably Dr. Shapiro could
2 perform similar test, though not identical, that would not
3 unfairly advantage the government in this case?

4 MR. O'TOOLE: Your Honor, if I might, before he
5 answers that, just for your information, there's only one test
6 that the government is claiming is running a muck of the
7 practice effect, and that was the WASI.

8 THE COURT: Wechsler test.

9 MR. O'TOOLE: Right. The other tests are tests that
10 we don't object to and that they propose, tests that do get
11 around the practice effect.

12 MR. HARDING: Judge, the government's problem was,
13 based on the practice effect is that we cannot perform any of
14 the nine tests that this list on Page 2 of their notice because
15 of the practice effect.

16 MR. O'TOOLE: You don't have to though, Rob. You
17 don't have to do that. You can do other test that you propose
18 --

19 THE COURT: Who is speaking now?

20 MR. O'TOOLE: This is Jeff O'Toole, Your Honor.

21 THE COURT: Okay, go ahead.

22 MR. O'TOOLE: There are tests that they have suggested
23 which are appropriate. The only one that the government has
24 claimed runs a muck of the practice effect was the WASI.

25 MR. HARDING: I don't know what you mean, Mr. O'Toole.

1 That's not the government's position. I really have to object.
2 We cannot perform, according to Dr. Shapiro, any of the nine
3 tests that appear on Page 2 of your notice.

4 THE COURT: Well, stop.

5 Dr. Shapiro, do you concur with that?

6 DR. SHAPIRO: Well, I would certainly agree that the
7 Wechsler is the one most subject to it, but I think that the
8 other neuropsychological tests as well would be subject to a
9 practice effect.

10 THE COURT: The others, meaning eight others?

11 DR. SHAPIRO: Yeah, not to the same extent as the
12 Wechsler, but it would be practice effect involved.

13 THE COURT: Well, let me go back to this question
14 again and Mr. O'Toole sort of intervened before I could get a
15 response.

16 MR. O'TOOLE: Apologize, Judge.

17 THE COURT: Dr. O'Connell, I really need to hear your
18 view as to whether you think should Dr. Shapiro go forward as he
19 proposes, does that give him what, a larger spectrum of view of
20 this individual than you had? Does it give the government some
21 sort of unfair advantage in the way they look at this individual
22 that you really are not in the position to rebut, for example?
23 I mean, that's where I need to get some guidance from you.

24 DR. O'CONNELL: Well, maybe to go to the first point,
25 there are the battery of test that I administered, but the

1 question I think is are there alternate versions, alternative
2 versions that measure the same domain that could be administered
3 whereby there wouldn't be such concern of the practice effect.

4 THE COURT: Right. What's the answer to that?

5 DR. O'CONNELL: I mean, that's -- I feel that is the
6 case, that there are alternative versions.

7 THE COURT: Well, are they proposing them? I don't
8 have the government's notice.

9 DR. O'CONNELL: They are proposing a battery of test
10 that I assume that they feel comfortable with them.

11 THE COURT: Well, do you recognize the tests as being
12 roughly comparable?

13 THE COURT: Some of them are, yes. Some I'm not sure
14 would be, you know, my first choice, but --

15 THE COURT: Well, question really is, do you think
16 that the test that they propose somehow goes beyond the same
17 kinds of information you were trying to get at whereas you were
18 limited in getting at them by the tests that you chose?

19 DR. O'CONNELL: Other than the tests that look at
20 personality and psychiatric symptoms, those are test that I did
21 not administer and those are included in the battery that they
22 propose.

23 THE COURT: And you say that that would give them a
24 what, how should I put it, a broader view of the --

25 DR. O'CONNELL: They're examining domains that I

1 specifically under instruction did not examine.

2 THE COURT: Now, I guess I go back to a question I
3 asked earlier though. Does it really only make sense to
4 understand the domains that you examined, to also have examined
5 those domains that? And I think that's what Dr. Shapiro said in
6 his opening remarks. What is your view on that, Dr. O'Connell?

7 DR. O'CONNELL: Judge, I'm sorry. Could you say that
8 one more time?

9 THE COURT: Does it only make sense to have the
10 personality tests in order to really interpret the results of
11 the other tests, which is what I think Dr. Shapiro was
12 suggesting in his opening remarks?

13 DR. O'CONNELL: I think it is helpful in developing a
14 comprehensive assessment. The challenge is, if you don't want
15 to assess personality in the 12.2 notice, you do not want to
16 assess certain things. It is then challenging to come up with a
17 battery of tests that excludes a certain domain, and that's what
18 I attempted do.

19 I would also say, though, that not every situation
20 where you administer an IQ test or neuro-psyche test that you
21 have to also administer personality. I think it helps give a
22 holistically picture of the individual and answers certain
23 questions, but I didn't feel that for the specific question that
24 I was asked --

25 In fact, I was -- one of the parts of the question

1 that I was asked, the instruction was not to assess personality.

2 THE COURT: All right. Dr. Shapiro, if you were not
3 to do the personality tests; that is, you do some of the
4 ultimate tests that Dr. O'Connell feels are fairly similar, but
5 avoid the one or two domains that are dissimilar, can you still
6 come up with some sort of meaningful opinion?

7 DR. SHAPIRO: Well, yes and no, Your Honor, if I can
8 explain this. One of the, one of the points is Dr. O'Connell
9 did a very comprehensive neuropsychological assessment. There
10 are really no other test batteries from a neurological point of
11 view that would give that comprehensive an assessment.

12 The things that I was left and that I proposed are
13 merely what are called neuropsychological screening tests, so
14 that they really wouldn't, you know, have the import nor the
15 comprehensiveness of the kinds of stuff that Dr. O'Connell did.
16 From a neuropsychological and cognitive point of view, they
17 would be much more limited, because he's already, you know, done
18 the comprehensive battery and it can't be repeated.

19 And I would still go back to my initial point, is that
20 even if those tests show impairment, you don't know what that
21 impairment means in terms of the person's behavior unless you
22 pushed in the broader context of the personality.

23 THE COURT: Well, let me put it very bluntly to you,
24 Dr. Shapiro. Can you live with -- maybe not happily, not
25 professionally outside this case -- with doing the identical

1 tests that he did or similar test not including the personality
2 inquiry?

3 DR. SHAPIRO: Well, as long as, as long as I were
4 free -- you know, first of all, they would be limited by the
5 fact that they are just screening as opposed to comprehensive
6 tests.

7 THE COURT: Understood.

8 DR. SHAPIRO: And the second thing is, as long as part
9 of that battery I would be able to use the tests that assess
10 motivation, then I could live with it.

11 Mr. O'Toole did say that he did do the test of memory
12 malingering, which is true, but memory is only one aspect of
13 cognition and there are several other kinds of test that assess
14 motivation in a broader picture.

15 THE COURT: Dr. O'Connell, what about the motivational
16 test? Is that a new wrinkle that somehow changes the game?

17 DR. O'CONNELL: No, I think that is one of the things
18 that I was trying to also get at is Mr. Lighty's effort during
19 the testing, so I do think that's a very salient issue.

20 MR. O'TOOLE: Your Honor, could we find out what
21 testing specifically they're talking about, because they listed
22 in their notice a short term interview of reported symptoms,
23 which I understand to be a psychiatric symptoms malingering
24 test. So, I would like to know a broader, broader scope of
25 malingering or did he try to assess some new tests. So I'd like

1 to know what test Dr. Shapiro is suggesting.

2 DR. SHAPIRO: As His Honor says, you know, I would not
3 be happy with it, but I could restrict it. I would not have to
4 do the structured interview of reported symptoms, but I would
5 want to do the validity indicator profile, which is a test for
6 assessment of motivation on cognitive tests.

7 THE COURT: Dr. McConnell, is that something that you
8 find acceptable?

9 DR. O'CONNELL: It is acceptable. And it's O'Connell,
10 Judge.

11 THE COURT: Oh, I'm sorry. O'Connell, sorry.

12 DR. O'CONNELL: That's fine.

13 THE COURT: All right. Well, let me tell you where I
14 am on this. I mean, this is always an interesting issue, but
15 we're not really here in a pure setting of trying to get the
16 best psychological profile of an individual.

17 The reality is that the defendant may have opted to do
18 no psychological testing at all. And whereas the psychological
19 status of the individual would be extremely interesting to
20 people determining whether or not to put this gentleman to
21 death, it doesn't go in because the defendant opts for it not to
22 go in. It's his choice.

23 And so, he really does control the extent to which
24 psychological testing gets done at all in this case. And if he
25 gives you a somewhat stunted, and it sounds like that's the way

1 it's being done here, referral, that's the way it gets done, and
2 you do the best you can as docs in this case.

3 So I think we will go with Mr. O'Toole's objections
4 here, modified obviously by what Dr. O'Connell has said about
5 what would be acceptable. And specifically, Mr. O'Toole, if you
6 want to state which are the tests that you do not want
7 performed, you better state them because, again, I don't have
8 any document in front of me.

9 MR. O'TOOLE: The test that I understand and, Dr.
10 O'Connell, if you can check me on this, I believe the first --
11 I'll just state what you asked for Judge, the ones that we don't
12 want. MMPI, which is -- MMPI-II, which is the Minnesota
13 Multiphasic Personality Inventory, Rorschach.

14 THE COURT: Rorschach.

15 MR. O'TOOLE: Rorschach, the Trauma Symptom Inventory
16 that details assessment of post-traumatic test; the Structure
17 Interview of Reported Symptoms and the Personality Assessment
18 Inventory. Those are the tests that we objected to and have
19 objected to to Mr. Harding over the last several days.

20 THE COURT: Dr. O'Connell, do you concur with that?

21 DR. O'CONNELL: Yes.

22 DR. SHAPIRO: May I just ask one question, sir? Then
23 is my using the abbreviated Wechsler okay then, the Wechsler
24 Abbreviated Scale of Intelligence?

25 MR. HARDING: That was something I supplemented my

1 motion the next day with an additional test called the WASI
2 test, which is a revised version of the Wechsler test. It's a
3 cognitive test; is it not, Doctor?

4 DR. SHAPIRO: It is, but as it says, it's an
5 abbreviated version. So again, it's not as comprehensive as the
6 tests that Dr. O'Connell --

7 MR. HARDING: But since it's not a personality test, I
8 don't think it's precluded.

9 THE COURT: All right. Does that resolve it though?

10 DR. SHAPIRO: Then it's okay for me to give that one
11 also?

12 THE COURT: All right.

13 MR. HARDING: And if I could ask while we're all still
14 on the line. Doctor, you have stated that you need certain
15 tests to analyze Mr. Lighty's motivations, and you named the
16 validity indicator profile. Are any of the other tests that
17 Mr. O'Toole just summarized ones that you think would be needed
18 also to understand motivation? The Detailed Assessment of
19 Post-traumatic Stress, for example, or the Trauma Symptoms
20 Inventory.

21 DR. SHAPIRO: Specifically for motivation, while not
22 each of them has a validity scale, you know, the scale for
23 motivation on them, but they do deal with motivation in terms of
24 interpretation of psychological as opposed to, you know,
25 neuropsychological symptoms.

1 So, if your -- if the Court's ruling is that I have to
2 restrict myself to exclusively cognitive things, then those
3 tests would not be relevant.

4 THE COURT: Well, that's my ruling. I think that's
5 where we come out.

6 DR. SHAPIRO: Yeah, as I said, it just puts me in that
7 awkward position. There may be some impairment there, but you
8 don't know what it means or what's causing it, but with that
9 understanding, you know --

10 THE COURT: Teddy Roosevelt once said, do the best you
11 can with what you got where you are.

12 DR. SHAPIRO: Okay.

13 THE COURT: So that's really the resolution here.

14 All right. Anything else?

15 MR. O'TOOLE: No, Your Honor. Thanks so much.

16 THE COURT: Thanks a lot.

17 (Whereupon, the telephone conference was concluded.)
18
19
20
21
22
23
24
25

CERTIFICATE OF COURT REPORTER

I, Linda C. Marshall, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/

Linda C. Marshall, RPR
Official Court Reporter